

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**CITY OF LAS CRUCES and COUNTY
OF DOÑA ANA,**

Plaintiffs,

vs.

**THE TRAVELERS INDEMNITY
COMPANY, a Connecticut corporation;**

**and UNITED STATES FIDELITY AND
GUARANTY COMPANY, a Maryland
Corporation,**

Defendants.

Civil No. 2:14-CV-00931-MV-LAM

**United States District Judge
Martha A. Vazquez**

**Magistrate Judge
Lourdes A. Martinez**

**AFFIDAVIT OF
ADRIENNE WIDMER**

COMES NOW Adrienne Widmer, the Affiant herein, having been duly sworn, states upon oath:

1. I am over the age of eighteen years, and in all respects competent to make this Affidavit. I have personal knowledge of the facts contained herein which are true and correct to the best of my knowledge.

2. I have been the Water Resources Administrator for the Utilities Department of the City of Las Cruces ("City") since December 2013 and, prior to that appointment, I was the Regulatory Environment Services/Technical Support Administrator for approximately 3 years. I have been employed by the Utilities Department for the City as a professional engineer since August 2006.

3. I am qualified to make this affidavit based upon my education, training, employment history and first-hand knowledge of the ongoing operations of the Joint Superfund Project (“JSP”).

4. The JSP was established by the City and County of Doña Ana (“County”) through a Memorandum of Understanding dated November 22, 2004, as amended on October 2, 2006 and on June 17, 2010 (“MOU”), which memorializes the City’s and County’s joint cooperation and financial obligation to remediate the PCE contamination at the Griggs and Walnut Groundwater Plume (“Site”) as determined by the Environmental Protection Agency (“EPA”).

5. The City is the fiscal agent for the JSP as provided in the MOU.

6. As fiscal agent, the City maintains both City and County documents pertaining to the financial activities of the JSP, and pursuant to the joint cooperation provisions of the MOU, the City’s Utilities Department maintains copies of all other JSP records and documents.

7. JSP’s financial and other records and documents were maintained under my supervision in my former capacity as the Regulatory Environmental Services/Technical Support Administrator, and are currently maintained under my supervision in my current capacity as Water Resources Administrator, during the course of the City Utilities Department’s regularly conducted business activities.

8. As such, I have personal knowledge that the following JSP records, the pertinent pages of which are attached hereto with the exhibit numbers assigned below, have been maintained as part of the City Utilities Department’s regular course of business on behalf of the JSP:

- Ex. 1 City's USF&G Insurance Policy No. 1CC A 59954;
- Ex. 2 County of Doña Ana's ("County") USF&G Insurance Policy No. 1CC 822989;
- Ex. 3 County's USF&G Insurance Policy No. 1CC C 5033;
- Ex. 4 County's USF&G Insurance Policy No. 1CC 0122535381;
- Ex. 5 EPA's "Identification of PCE Release Areas in the Vicinity of the Griggs and Walnut Groundwater Plume", dated November 2003;
- Ex. 6 "Evaluation of Release Timing" report by D.B. Stephens and Associates dated December 7, 2005;
- Ex. 7 EPA's "Record of Decision" dated June 18, 2007;
- Ex. 8 "Settlement Agreement" with EPA dated April 20, 2005;
- Ex. 9 EPA's "Unilateral Administrative Order" dated October 15, 2009;
- Ex. 10 EPA's Potentially Responsible Party ("PRP") Special Notice Letter dated October 7, 2004;
- Ex. 11 EPA's PRP Notice letter dated August 5, 2008;
- Ex. 12 EPA's Notice to Armory dated May 21, 2009;
- Ex. 13 EPAs Notice to Armory – PRP Reinstated – dated March 30, 2011;
- Ex. 14 EPA's Notice to NM Armory Board – PRP Reinstated – March 30, 2011;
- Ex. 15 Fireman Fund's letter accepting defense dated November 4, 2013;
- Ex. 16 SafeCo's letter accepting defense dated September 9, 2011;
- Ex. 17 EPA's 104(e) Information Request to County dated March 4, 2009;
- Ex. 18 EPA's 104(e) Information Request to City dated March 4, 2009;
- Ex. 19 Traveler's Denial Letter dated April 8, 2011;
- Ex. 20 Traveler's Second Denial Letter dated May 22, 2013;
- Ex. 21 EPA's 2011 "Unilateral Order for Remedial Action" dated February 14, 2011;
- Ex. 22 NM Dept. of Military Affairs letter to EPA dated September 17, 2004;

Ex. 23 Lease between the City and the State of New Mexico (Armory Board) dated July 16, 1948;

Ex. 24 Shomaker & Associates "Ground-Water Flow and Solute Transport Model for the Griggs and Walnut Superfund Site, Las Cruces, New Mexico" dated November 2006

9. Filed contemporaneously herewith are the Affidavits of former Guard employees Antonio Marta, Casimiro Gonzales, Jerry Smith and Roland Frost, which were obtained by the County's Risk Management Department during the course of the JSP's efforts to determine the sources of contamination at the Site.

10. On October 30, 1997, the New Mexico Environmental Department submitted a report to EPA entitled "Preliminary Assessment of Las Cruces PCE, Doña Ana County, New Mexico," as the first step toward consideration of the Site for the National Priorities List, which is EPA's list of the highest national priorities among the known or threatened releases of hazardous substances throughout the United States.

11. The City and County paid \$800,000 as the JSP's share of the cost of the RI/FS to address contamination at the Site pursuant to the Settlement Agreement entered into between the City, County and EPA.

12. The City and County have expended more than \$3.5 million to design and construct the remedial infrastructure at the Site.

13. The City and County are currently negotiating a final remedy with the EPA for the Site in the form of a Consent Decree, the details of which have been provided to USF&G.

14. Although the defense in the administrative proceedings described above was tendered to USF&G by the City and County, USF&G has failed and refused to defend either of them.

15. Since that tender, the JSP has expended in excess of \$800,000 for the cost of such defense which has not been reimbursed by USF&G or any other insurance carrier.

